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IN THE COURT OF APPEALS OF INDIANA

JEFFREY M. PERZ,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0606-EX-451
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and INDIANA BELL TELEPHONE COMPANY,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 05-R-3327

March 8, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jeffrey M. Perz ("Perz") appeals the decision of the Review Board of the Indiana Department of Workforce Development ("the Board') with respect to his claim for unemployment benefits. He raises two issues:

I. Whether the Board erred when it denied Perz's request to submit additional evidence pursuant to Indiana Administrative Code title 646, section 3-12-8(b); and,

II. Whether the Board's conclusion that Perz was terminated by his employer for just cause is contrary to law.

Concluding the Board did not err when it denied the request to submit additional evidence and that the Board's conclusion is not contrary to law, we affirm.

Facts and Procedural History

Perz was employed as a full-time customer systems technician by Indiana Bell Telephone Company from December 3, 2000, through May 18, 2004. As part of his responsibilities, Perz was required to complete a job ticket including the time, location, and duration of each line repair job he performed. In April 2004, Indiana Bell compared Perz's job tickets from the previous month with the records from the GPS tracking system installed on the truck Perz used. This investigation revealed nearly thirty occasions where Perz indicated that he was at a jobsite when he was actually at his home address. Indiana Bell terminated Perz's employment because he falsified company records and misused company time and property.

Perz filed an application for unemployment benefits with the Indiana Department of Workforce Development ("IDWD"). On July 1, 2004, an IDWD deputy determined that Perz was not discharged for just cause and was therefore entitled to unemployment benefits. Indiana Bell appealed the deputy's determination. After a hearing on

September 15, 2005, an administrative law judge reversed the deputy's decision and found that Perz had been discharged for just cause for falsification of company records and misuse of company property and time. Perz contended at the hearing that he sometimes went home between jobs to treat severe headaches he suffered as the result of several head traumas. Perz appealed to the Board and requested leave to submit additional evidence. On November 10, 2005, the Board denied Perz's request to submit additional evidence and affirmed the ALJ's decision. Perz now appeals.

Standard of Review

The Indiana Unemployment Compensation Act provides that "[a]ny decision of the review board shall be conclusive and binding as to all questions of fact." Ind. Code § 22-4-17-12(a) (2005). When the decision is challenged as contrary to law, the reviewing court is limited to a two-part inquiry into the "sufficiency of the facts found to sustain the decision" and the "sufficiency of the evidence to sustain the findings of facts." Ind. Code § 22-4-17-12(f) (2005). This standard calls upon this court to review: (1) determinations of specific or basic underlying facts; (2) conclusions or inferences from those facts, or determinations of ultimate facts; and (3) conclusions of law. McHugh v. Review Bd. of Ind. Dep't of Workforce Dev., 842 N.E.2d 436, 440 (Ind. Ct. App. 2006) (citations omitted).

Review of the Board's findings of basic fact are subject to a "substantial evidence" standard of review. Id. In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Board's findings. Id. Reversal is warranted only if there is no substantial evidence to support the

Board's findings. Id. The Board's determinations of ultimate facts involve an inference or deduction based upon the findings of basic fact that is typically reviewed to ensure that the Board's inference is reasonable. Id. Finally, we review conclusions of law to determine whether the Board correctly interpreted and applied the law. Id. (citing Parkison v. James River Corp., 659 N.E.2d 690, 692 (Ind. Ct. App. 1996)).

I. Request to Submit Additional Evidence

First, Perz contends that the Board erred when it denied his request to submit additional evidence pursuant to Indiana Administrative Code title 646. We disagree.

Section 3-12-8(b) provides, in pertinent part:

> Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge.

Ind. Admin. Code tit. 646, sec. 3-12-8(b) (2006). Thus, the Board has discretion to deny a request for a further hearing based on allegedly new evidence if the applicant fails to present a good reason for the failure to present the evidence at the original hearing. Best Lock Corp. v. Review Bd. of Ind. Dep't of Employment and Training Servs., 572 N.E.2d 520, 528-29 (Ind. Ct. App. 1991).

Perz argues that the Board erred when it denied his request to submit his medical records and an affidavit from his mother stating that she had notified his supervisor of his headaches. First, we note that the assorted documents Perz attached to his appeal as additional evidence are duplicates of the evidence submitted at the hearing before the

ALJ. Appellant's App. pp. 17-79; Ex. Vol., Claimant's Ex. 1. Therefore, this is not new evidence. Perz did not attach the purported affidavit from his mother to his appeal, but only asserts that she averred that she had spoken to his supervisor about his headaches. However, at the hearing before the ALJ, Perz admitted that he did not inform Indiana Bell that he suffered from headaches and needed time at home during the day to treat them. Tr. pp. 15, 40. Thus, Perz failed to offer good reason for the Board to admit additional evidence and his request was properly denied.

II. Just Cause Discharge

Next, Perz challenges the Board's determination that he was terminated for just cause. In Indiana, an unemployed claimant is ineligible for unemployment benefits if he is discharged for just cause pursuant to Indiana Code section 22-4-15-1, which provides:

> "Discharge for just cause" as used in this section is defined to include but not be limited to:
>
> * * *
>
> (8) . . . or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

Ind. Code § 22-4-15-1(d) (2005). Discharge for just cause in connection with employment includes discharge for the employee's willful disregard of the employer's interest or the employee's willful disregard of the employee's duties. Osborn v. Review Bd. of the Ind. Employment Sec. Div., 178 Ind. App. 22, 27, 381 N.E.2d 495, 498 (1978).

Perz contends that he was not terminated for just cause because his "job quantity and quality never suffered as a result of his treatments." Br. of Appellant at 9. However, the Board found and Perz admitted that he deviated from his route to take breaks at home in violation of his employer's policy. Appellant's App. p. 15; Tr. pp. 37-38. Indiana

Bell's report comparing Perz's job tickets to the GPS system on his vehicle showed that in March and April of 2004, Perz spent a total of 1253 minutes (approximately twenty hours) at his home when he reported that he was at a job location. Ex. Vol., Employer's Ex. 2. Thus, the Board's determination that Perz breached his duty to his employer is clearly supported by substantial evidence contained within the record. Accordingly, the Board's conclusion that Perz was terminated for just cause is not contrary to law.

Conclusion

The Board did not err when it denied Perz's request to submit additional evidence and the Board's conclusion that Perz was terminated for just cause is not contrary to law.

Affirmed.

NAJAM, J., and MAY, J., concur.